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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/001,286	11/30/2001	Eric Aerts	9971-005	2124
20583	7590	11/04/2004		
JONES DAY 222 EAST 41ST ST NEW YORK, NY 10017			EXAMINER TORRES VELAZQUEZ, NORCA LIZ	
			ART UNIT	PAPER NUMBER
			1771	

DATE MAILED: 11/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/001,286

Applicant(s)

AERTS, ERIC

Examiner

Norca L. Torres-Velazquez

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 July 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-73 is/are pending in the application.
- 4a) Of the above claim(s) 48-73 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-47 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 July 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed July 21, 2004 have been fully considered but they are not persuasive.

a. Applicants argue that the Smith reference does not teach, disclose or suggest prelamination.

The Smith reference provides the fabric laminate structure of claim 1 that comprises a first fabric, a second fabric and a heat sensitive adhesive layer in between. The final product of Smith provides a similar structure as the presently claimed fabric laminate structure.

b. Applicants further argue that the Smith reference teaches the use of webs instead of films.

First is noted that the fabric laminate of claim 1 does not claim the adhesive layer to be a film and second, that the adhesive web of the Smith reference is an open net-like film of heat sensitive adhesive. The presently claimed film as claimed (in claim 8), does not preclude the use of an open net-like film such as the one taught in Smith. The film as claimed is not limited to a non-porous film or a monolithic layer film. Therefore, it is the Examiner's position that the structure disclosed by Smith reads on the presently claimed structure.

c. With regards to claim 26, Applicants further argue that the Smith reference does not indicate any deficiency as to support in laminates made in accordance with its teaching.

It is the Examiner's position that the use of an insert wire to provide an enhanced support would be recognized in the art of Smith. Further, the reference does not preclude the inclusion of such enhancement.

2. Applicant's arguments with respect to claims 32-38 have been considered but are moot in view of the new ground(s) of rejection.

Applicants argue that the Smith and Tedeschi references fail to teach that the adhesive layer is a polyurethane and also fails to teach the thickness of it.

Election/Restrictions

3. Claims 1-3, 5-6 and 8-25 (non-elected group I) are rejoined herein. Pending claims are 1-73, claims 47-73 are withdrawn from consideration.

Drawings

4. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "*third layer of woven, stretch fabric*" must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the

drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

6. Claims 2 and 3 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are: the spatial relation of the woven moldable stretch fabric in relation to the layers of laminate in claim 1.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 1, 4-9 and 12-24 are rejected under 35 U.S.C. 102(e) as being anticipated by RABINOWICZ et al. (US 6,645,040 B2).

RABINOWICZ et al. discloses a two-ply support garment such as a brassiere that is made by positioning a piece of heat-bondable polymer film between two fabric plies of a two-ply fabric blank. A brassiere embodiment includes a film in partial regions of the cups. (Abstract) The film bonded between the plies increases the resistance to stretching of the fabric and thus provides increased support and/or shaping properties to the area(s) of the garment. (col. 2, lines 29-32) The reference teaches that a preferred film comprises an elastically stretchable polyurethane film. (Col. 2, lines 51-52) The brassiere 20 includes a body-covering portion 22 comprising a pair of cups 24, a torso-encircling portion 26, and a central panel 28 extending between the cups. The brassiere also includes a pair of shoulder straps 30 attached to the body-covering portion 22. (Col. 4, lines 4-8) The reference further teaches that the heat-bondable film has a thickness from about 135 μ to 250 μ . [5.31-9.84 mil] (Col. 5, lines 12-15) The reference further teaches that the heat-bondable film also increased the opacity of the two-ply fabric. (Col. 5, lines 45-50)

9. Claims 1-7 and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Smith et al. (US 5,447,462).

Smith is concerned with the creation of a laminated fabric used in the construction of a brassiere. Smith teaches two fabrics laminated together by an open net-like film of heat sensitive adhesive. (Abstract) The fabrics are laminated by using heat and pressure. (Refer to Column 9) The reference teaches the fabric to have a cup. (Figure 13). Smith teaches applicant's claimed openings. (Figure 11) Smith further teaches the use of additional layers laminated in the same

manner as the first two layers (Col. 5, lines 18-25). The reference further teaches the fabrics to be elastic and woven. (Col. 5, lines 24-34)

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claim 25 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith as applied above, and further in view of Kollmanthaler et al. (US 5,967,876).

Smith fails to teach the use of an insert wire. Kollmanthaler is concerned with the creation of a brassiere. Kollmanthaler teaches the use of an insert wire. (Abstract) It would have been obvious to a person having ordinary skill in the art to utilize an insert wire in the bra of Smith. Such a combination would have been motivated by the desire to provide further support to the wearer of the garment.

12. Claims 28-31 and 46-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith as applied above, and further in view of Tedeschi et al. (US 5,984,762).

Smith teaches the use of a strap but fails to teach cushioning said strap. Tedeschi is concerned with the creation of a bra strap. Tedeschi teaches applicant's claimed cushioning layers. (Abstract).

With respect to the process limitations of prelaminating the adhesive, it is the Examiner's it is the examiner's position that the laminate fabric and brassiere created by the combination of

Smith and Tedeschi is identical to or only slightly different than the presently claimed laminate and brassiere prepared by the method of the claim(s), because both structures have a first fabric laminated to a second fabric by an adhesive in between. Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or an obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985). The burden has been shifted to the applicant to show unobvious differences between the claimed product and the prior art product. *In re Marosi*, 218 USPQ 289, 292 (Fed. Cir. 1983).

13. Claims 8-24 and 28-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over SMITH as applied to claims 1-7 and 27 above, and further in view of RABINOWICZ et al. (US 6,645,040 B2).

SMITH fails to teach the thickness of the adhesive film and also that it is polyurethane. RABINOWICZ et al. discloses a two-ply support garment such as a brassiere that is made by positioning a piece of heat-bondable polymer film between two fabric plies of a two-ply fabric blank. A brassiere embodiment includes a film in partial regions of the cups. (Abstract) The film bonded between the plies increases the resistance to stretching of the fabric and thus provides increased support and/or shaping properties to the area(s) of the garment. (Col. 2, lines 29-32) The reference teaches that a preferred film comprises an elastically stretchable polyurethane film. (Col. 2, lines 51-52) The brassiere 20 includes a body-covering portion 22 comprising a pair of cups 24, a torso-encircling portion 26, and a central panel 28 extending

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between the cups. The brassiere also includes a pair of shoulder straps 30 attached to the body-covering portion 22. (Col. 4, lines 4-8) The reference further teaches that the heat-bondable film has a thickness from about 135 μ to 250 μ . [5.31-9.84 mil] (Col. 5, lines 12-15) The reference further teaches that the heat-bondable film also increased the opacity of the two-ply fabric. (Col. 5, lines 45-50)

Since both references are directed to the construction of brassieres, the purpose disclosed by RABINOWICZ et al. would have been recognized in the pertinent art of SMITH.

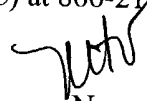
It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the laminate structure of the brassiere of SMITH and provide with a heat-bondable film layer of a polyurethane material with the motivation of providing the laminate with a film material that is resiliently stretchable and have a high recovery so that when stretched and then released, they return to substantially their original unstretched length as disclosed by RABINOWICZ et al. (col. 5, lines 20-24) It is noted that while RABINOWICZ et al. teaches a thickness of the film of about 5.31 to about 9.84 mil, it would have been obvious to use a thinner film in order to have a lesser degree of opacity is desired as taught by RABINOWICZ et al. (Col. 5, lines 45-50)

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Norca L. Torres-Velazquez whose telephone number is 571-272-1484. The examiner can normally be reached on Monday-Thursday 8:00-4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Norca L. Torres-Velazquez

Examiner

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November 1, 2004